

## Message Text

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ORIGIN EB-08

INFO OCT-01 EA-10 ISO-00 JUSE-00 FTC-01 L-03 STR-07  
H-01 TRSE-00 SS-15 NSC-05 CIAE-00 INR-10 NSAE-00  
/061 R

DRAFTED BY EB/IFD/BP:T A SCHLENKER:BT  
APPROVED BY EB/IFD/BP:HARVEY J. WINTER  
EA/ANP:C TWINING  
JUSTICE:C CIRA  
FTC:J FISCHBACH  
L/EB:S BENSON

-----093317 121929Z /73

P R 121907Z SEP 78  
FM SECSTATE WASHDC  
TO AMEMBASSY CANBERRA PRIORITY  
INFO AMCONSUL BRISBANE  
AMCONSUL MELBOURNE  
AMCONSUL PERTH  
AMCONSUL SYDNEY

C O N F I D E N T I A L STATE 230713

E.O. 11652: GDS

TAGS: ETRD, US, AS, EMIN, ECSM

SUBJECT: ANTITRUST: DISCUSSIONS OF POSSIBLE BILATERAL  
ANTITRUST AGREEMENT

1. AUSTRALIAN TEAM CONSISTING OF ATTORNEY GENERAL DURACK;  
SIR CLARRIE HARDIE, SECRETARY TO ATTORNEY GENERAL'S DE-  
PARTMENT; H. TREVOR BENNETT, ATTORNEY GENERAL'S DEPART-  
MENT; PAUL H. BARRATT, DEPARTMENT OF TRADE AND RESOURCES;  
ANTHONY HARTNELL, DEPARTMENT OF BUSINESS AND CONSUMER  
AFFAIRS; JONATHAN THWAITES, EMBASSY OF AUSTRALIA AND  
RICHARD ST. JOHN, EMBASSY OF AUSTRALIA HELD SERIES OF DIS-  
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CUSSIONS WITH OFFICIALS OF DEPARTMENT OF JUSTICE, ANTI-  
TRUST DIVISION, FEDERAL TRADE COMMISSION (FTC) AND DEPART-  
MENT AUGUST 31 AND SEPTEMBER 1 AND 5. PRELIMINARY  
SESSIONS FIRST TWO DAYS INCLUDED ONLY WORKING-LEVEL  
AUSTRALIAN AND AMERICAN STAFFS. JUDGE BELL OPENED MEET-  
INGS AND HOSTED LUNCHEONS SEPTEMBER 1 AND 5 FOR VISITORS.  
US NEGOTIATIONS WERE HANDLED BY ASSISTANT ATTORNEY GENERAL

JOHN SHENEFIELD AND DOUG ROSENTHAL, CHIEF OF FOREIGN COMMERCE SECTION, ANTITRUST DIVISION. FTC WAS REPRESENTED BY DAN SCHWARTZ, ASSISTANT DIRECTOR OF COMPETITION. ACTING LEGAL ADVISER LEE MARKS AND DIRECTOR OF OFFICE OF BUSINESS PRACTICES HARVEY WINTER PARTICIPATED FOR STATE.

2. BREADTH OF AUSTRALIAN PROPOSALS FOR BILATERAL "AGREEMENT" ON ANTITRUST SURPRISED US PARTICIPANTS. BECAUSE OF COMPLEXITY OF MATTERS RAISED NO REPEAT NO DEFINITIVE UNDERSTANDING WAS CONCLUDED, AS AUSTRALIANS ORIGINALLY REQUESTED. BOTH SIDES FINALLY AGREED THAT ADDITIONAL TIME TO WORK OUT DETAILS WOULD BE NECESSARY AND AN ADDITIONAL MEETING IN A FEW MONTHS MIGHT BE NECESSARY. EXACT TYPE OF BILATERAL AGREEMENT WAS ALSO LEFT OPEN. IT WAS AGREED THAT AUSTRALIANS COULD REPLY TO PRESS INQUIRIES THAT WASHINGTON MEETING WAS TO DISCUSS A BILATERAL AGREEMENT ON ANTITRUST BUT DETAILS WOULD NOT BE SPECIFIED.

3. WORKING PROPOSALS INCLUDE FOLLOWING PROVISIONS:  
(A) AUSTRALIAN NOTIFICATION TO USG OF AUSTRALIAN GOVERNMENT POLICIES THAT MIGHT AFFECT AUSTRALIAN FIRMS AND HAVE ANTITRUST IMPLICATIONS, AND US NOTIFICATION OF IMPENDING ANTITRUST INVESTIGATIONS AFFECTING AUSTRALIAN INTERESTS;  
(B) CONSULTATIONS FOLLOWING FROM (A) ABOVE; (C) FOLLOWING CONSULTATIONS THE PARTIES MAY AGREE TO DISAGREE OR TO COOPERATE WITH EACH OTHER, ACCORDING TO THEIR NATIONAL CONFIDENTIAL

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INTERESTS; (D) MUTUAL COOPERATION IN ANTITRUST LAW ENFORCEMENT MATTERS; (E) AUSTRALIAN GOVERNMENT MAY REQUEST USG TO TAKE ACTION "TO SEEK TERMINATION OF ... PRIVATE ANTITRUST PROCEEDINGS." LAST TOPIC IN PARTICULAR GOES WELL BEYOND ANTITRUST AGREEMENTS RECENTLY CONCLUDED OR IN PROCESS WITH FRG, CANADA AND UK. IT WAS POINTED OUT THAT (E) WOULD INVOLVE FUNDAMENTAL CHANGE IN US ANTITRUST LAW AND WOULD UNDOUBTEDLY BE DIFFICULT TO ACHIEVE.

4. US TEAM EXPLAINED THAT IT WOULD BE NECESSARY TO DO INTRAGOVERNMENTAL SPADE WORK ON AUSTRALIAN PROPOSALS. FEDERAL TRADE COMMISSION, THE OTHER US ANTITRUST LAW ENFORCEMENT AGENCY, WOULD HAVE TO GIVE THE MATTER DUE CONSIDERATION AND DEPARTMENT WOULD HAVE TO REQUEST CIRCULAR 175 AUTHORIZATION FOR NEGOTIATING AUTHORITY. ANTITRUST ENFORCEMENT AGENCIES MAY WISH TO CONSULT CONGRESS.

5. NATURE OF AGREEMENT WOULD ALSO HAVE TO BE WORKED OUT. IT COULD BE ALONG FORMAL LINES OF AN EXECUTIVE AGREEMENT, SUCH AS THAT SIGNED WITH FRG IN 1976, OR IT COULD BE IN NATURE OF INFORMAL PRAGMATIC UNDERSTANDING, SUCH AS THAT

REACHED WITH UK IN 1977. US HOPES TO RETURN COMMENTS ON WRITTEN WORKING TEXT IN 4-6 WEEKS AND SET NEXT MEETING IN FIRST HALF OF NOVEMBER. TEXT OF AUSTRALIAN WORKING DRAFT BEING POUCHED TO EMBASSY. WE BELIEVE AUSTRALIANS WERE SATISFIED WITH DISCUSSIONS AND HAVE BETTER UNDERSTANDING OF OUR ANTITRUST PHILOSOPHY AND PARAMETERS OF ACTIONS THAT COULD BE TAKEN.

6. AS PRESENT STAGE OF NEGOTIATIONS IS STILL IN PRELIMINARY STAGES BOTH SIDES DESIRE AS LITTLE PUBLICITY AS POSSIBLE. EMBASSY AND ADDRESSEES ARE REQUESTED TO REFER ANY INQUIRIES TO DEPARTMENT. BACKGROUND OR COMMENTS WOULD BE WELCOME. CHRISTOPHER

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## Message Attributes

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